IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

Crl.MC.No. 2970 of 2007()

CC.73/1994 of JUDL.MAGISTRATE OF FIRST CLASS, MANANTHAVADY

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PETITIONER: ACCUSED

K.ABDULLA, THENARI ESTATE, RESIDING AT
VENGAPPALLI, VENGAPPALLI P.O.,
PINANGODE - 673 121.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: COMPLAINANT AND STATE

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1. A.V.RAMACHANDRAN,
S/O.N.VENKITASUBBAYYAN CHETTY,
KARAMATTU VEEDU, THIRUNELLY AMSOM DESOM,
THIRUNELLY P.O., MANANTHAVADY TALUK.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.SAKIR.K.H.
PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2970 of 2007

Dated this the 9th day of October 2007

O R D E R

The petitioner faces indictment in a prosecution for offences punishable under Section 138 of the Negotiable Instruments Act. He was found not guilty and acquitted by the trial court - Judicial First Class Magistrate Court, Mananthavady in C.C.No.73/94. The complainant preferred an appeal before this court and this court by judgment dated 18/5/2004 in Crl.A.No.396/1997 set aside the said verdict of not guilty and acquittal and sentenced the accused to undergo S.I for a period of six months. There was also a direction to pay an amount of Rs.2,45,000/- as fine and in default of payment of fine, to undergo S.I for a period of six weeks. The said verdict of guilty, conviction and sentence have now become final without challenge.

2. The petitioner, along with the respondent/complainant has now come before this court to report to the court that the dispute between the parties have been settled amicably. The entire cheque amount has already been paid. There is no dispute between the parties. The complainant has compounded the offence alleged against the petitioner herein. In these circumstances, it is prayed that the composition may be accepted and the sentence imposed on the petitioner may be set aside.

3. This court in the decision in Sabu George v. Home Secretary [2007(1) KLT 982] has taken the view that a composition can be accepted even after the verdict of guilty, conviction and sentence have become final as per a judgment/order of this court. The petitioner and the respondent have appeared before me through counsel. They have filed a joint statement to confirm that the matter has been settled. The learned counsel for the respondent vouches for the fact that the settlement has been entered into and the complainant has compounded the offence allegedly committed by the petitioner. The learned counsel for the first respondent/complainant asserts that the matter has been settled between the parties. The joint application is duly signed by the accused and their respective counsel.

4. I am satisfied, in the facts and circumstances of this case that the dictum in Sabu George v. Home Secretary [2007(1) KLT 982] can be invoked and the composition can be accepted. If the composition were not accepted, the petitioner shall be compelled to undergo the substantive sentence of imprisonment for a period of six months. That, I am satisfied, would be clear negation of justice. In these circumstances, invoking the dictum in Sabu George v. Home Secretary [2007(1) KLT 982], I am satisfied that the composition can be accepted. This court had, as per order dated 27/9/2007 directed

the petitioner to deposit an amount of Rs.5,000/- as cost to the State. The said amount has been paid and receipt No.17 dated 3/10/2007 issued by the Judicial First Class Magistrate Court-I, Mananthavady is produced before this court to instill the requisite satisfaction.

5. In the result:

a) This Criminal Miscellaneous Case is allowed.

b) Composition of the offence under Section 138 of the Negotiable Instruments Act by the first respondent/complainant is accepted.

c) Consequently, the sentences imposed on the petitioner in toto is set aside.

d) An amount of Rs.5,000/- (Rupees five thousand only) remitted by the petitioner as cost, lying in deposit before the learned Magistrate shall be credited to the State as cost.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007